

X \*OGC Has Reviewed\*

De Arnaud v. Ainsworth, 24 App. D.C. 167 (1904).

The plaintiff, who had been prosecuting a claim for services rendered as a spy to the Union army during the Civil War, including compensation and pension, and requesting the award of a medal of honor, sued the defendant, who was the Chief of the Record and Pension Office ~~of~~<sup>an</sup> the War Department for/~~an~~ alleged defamatory report regarding plaintiff to the Secretary of War. The report which was claimed to be defamatory stated that De Arnaud was never an officer, and that the services claimed by him to have been performed were grossly and fraudulently exaggerated, and in part wholly fictitious. This report was subsequently incorporated by a Congressional committee in its report concerning plaintiff's compensation claim. The action is brought against the defendant in his private individual character and without reference to his official duties or position. The Court stated, however, -

11 " . . . ~~but~~ this can make no difference so far as his right of defense is concerned. It is sufficiently shown, in fact conceded, that the defendant was a colonel in the regular army, and was duly appointed to and held the position of chief of the record and pension office, and that it was in that character that he made the report to the Secretary of war of which complaint is made." (At page 176).>

The Court pointed out that if the alleged libelous report had been made by the Secretary of War to the President, no action for libel could have been maintained against the Secretary, and as the defendant was the duly appointed official

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to make the investigation and report to the Secretary for action of the President, -

"...the same reason applies for the privilege of the report that would apply if the investigation and report had been made by the Secretary in person." (At page 177).

"The question of motive, or whether there was a want of good faith on the part of the defendant, in making of the report, is not a material question in the case. A party is not liable for the motives with which he discharges an official duty; nor is he liable for any mistake of fact he may commit in the course of the exercise of that duty. Public policy ~~affords~~ <sup>affords</sup> absolute protection and immunity for what may be said or written by an officer in his official report or communication to a superior, when such report or communication is made in the course and discharge of official duty. Otherwise the perfect freedom which ought to exist in discharge of public duty might be seriously restrained, and often to the detriment of the public service. Of course, when a party steps aside from duty and introduces into his report or communication defamatory matter wholly irrelevant and foreign to the subject of inquiry, a different question is presented. But no such question is presented here; and the action is not attempted to be founded upon libelous matter extraneous to the proper subject of inquiry, but upon the report made by the defendant as an entirety." (At pages 177 and 178).

The Court further stated that -

"There is no reasonable foundation for the contention that, because the ~~and~~ defendant was not at the head of the War department, therefore his report was not entitled to the privilege that would attach to a similar report made by the Secretary of war." (At page 180).

"...And, as it is impossible for a single individual to perform in person all the various duties assigned to the particular department of which he is head, he must ~~of~~ of necessity, under proper orders and regulations, perform the larger portion of such duties through the agencies of the heads of bureaus and divisions of his department. But the

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work when done is, in contemplation of law, the work of the department, and is entitled to all the privilege and protection that would attach to it if done by the Secretary in person. It is, therefore, not the particular position of the party making the report or communication that entitles it to absolute privilege so much as the occasion of making it, and the reasons of public policy for the immunity." (At pages 180 and 181). >